

185448.1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
VICTOR HOTH0 and AYAKO MITSUI,
Individually and as parents and natural guardians of
infant, ALYN HOTH0,

Plaintiffs,

- against -

EDWARD F. ROSSI, M.D., PEDIATRICS EAST
OF NEW YORK, P.C. and ST. VINCENT'S
HOSPITAL, MANHATTAN,

Defendants.

**ANSWER AND AFFIRMATIVE
DEFENSES**

**05 CV 2609
Judge Baer**

JURY TRIAL DEMANDED

-----X
Defendant, **SAINT VINCENTS CATHOLIC MEDICAL CENTERS OF NEW YORK**
s/h/a ST. VINCENT'S HOSPITAL, MANHATTAN (hereinafter referred to as "ST. VINCENT'S
HOSPITAL, MANHATTAN"), by its attorneys, COSTELLO SHEA & GAFFNEY LLP, answering
the Plaintiff's Complaint, sets forth the following upon information and belief:

FIRST: Denies knowledge or information sufficient to form a belief as to the truth of
the allegation contained in paragraph "1" of Plaintiff's Complaint and refers all questions of law to
this Honorable Court.

SECOND: Denies knowledge or information sufficient to form a belief as to the truth of
the allegation contained in paragraph "2" of Plaintiff's Complaint and refers all questions of law to
this Honorable Court.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of
the allegation contained in paragraph "3" of Plaintiff's Complaint and refers all questions of law to
this Honorable Court.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "4" of Plaintiff's Complaint.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "5" of Plaintiff's Complaint.

SIXTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "6" of Plaintiff's Complaint.

SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "7" of Plaintiff's Complaint.

EIGHTH: Denies the allegation contained in paragraph "8" of Plaintiff's Complaint in the form alleged but admits that Defendant, ST. VINCENT'S HOSPITAL, MANHATTAN, is a corporation existing under the laws of the State of New York and is located at 170 West 12th Street, New York, New York 10011.

NINTH: Denies the allegation contained in paragraph "9" of Plaintiff's Complaint in the form alleged but admits that on certain date(s) employees of Defendant, ST. VINCENT'S HOSPITAL, MANHATTAN, rendered care and treatment to ALYN HOTH0 and refers all questions of law to this Honorable Court.

TENTH: Denies the allegation contained in paragraph "10" of Plaintiff's Complaint in the form alleged but admits that on certain date(s) employees of Defendant, ST. VINCENT'S HOSPITAL, MANHATTAN, rendered care and treatment to ALYN HOTH0 and refers all questions of law to this Honorable Court.

ELEVENTH: Denies the allegations contained in paragraph "11" of Plaintiff's Complaint.

TWELFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "12" of Plaintiff's Complaint and refers all questions of law

to this Honorable Court.

THIRTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "13" of Plaintiff's Complaint and refers all questions of law to this Honorable Court.

FOURTEENTH: Denies the allegation contained in paragraph "14" of Plaintiff's Complaint in the form alleged but admits that on certain date(s) employees of Defendant. ST. VINCENT'S HOSPITAL, MANHATTAN, rendered care and treatment to ALYN HOTH0 and refers all questions of law to this Honorable Court.

FIFTEENTH: Denies the allegation contained in paragraph "15" of Plaintiff's Complaint in the form alleged but admits that on certain date(s) employees of Defendant. ST. VINCENT'S HOSPITAL, MANHATTAN, rendered care and treatment to ALYN HOTH0 and refers all questions of law to this Honorable Court.

SIXTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "16" of Plaintiff's Complaint.

SEVENTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "17" of Plaintiff's Complaint.

EIGHTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "18" of Plaintiff's Complaint.

NINETEENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "19" of Plaintiff's Complaint.

TWENTIETH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "20" of Plaintiff's Complaint.

TWENTY-FIRST: Denies knowledge or information sufficient to form a belief as to the

truth of the allegation contained in paragraph "21" of Plaintiff's Complaint.

TWENTY-SECOND: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "22" of Plaintiff's Complaint.

TWENTY-THIRD: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "23" of Plaintiff's Complaint.

TWENTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "24" of Plaintiff's Complaint.

TWENTY-FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "25" of Plaintiff's Complaint.

TWENTY-SIXTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "26" of Plaintiff's Complaint.

TWENTY-SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "27" of Plaintiff's Complaint.

TWENTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "28" of Plaintiff's Complaint.

TWENTY-NINTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "29" of Plaintiff's Complaint.

THIRTIETH: Denies the allegations contained in paragraph "30" of Plaintiff's Complaint.

THIRTY-FIRST: Denies the allegations contained in paragraph "31" of Plaintiff's Complaint.

COUNT ONE

THIRTY-SECOND: Answering paragraph "32" of Plaintiff's Complaint defendant, repeats, reiterates and realleges each and every response to paragraphs "1" through "31", inclusive,

of Plaintiff's Complaint as if set forth at length herein.

THIRTY-THIRD: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "33" of Plaintiff's Complaint.

THIRTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "34" of Plaintiff's Complaint.

THIRTY-FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "35" of Plaintiff's Complaint.

COUNT TWO

THIRTY-SIXTH: Answering paragraph "36" of Plaintiff's Complaint defendant, repeats, reiterates and realleges each and every response to paragraphs "1" through "35", inclusive, of Plaintiff's Complaint as if set forth at length herein.

THIRTY-SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "37" of Plaintiff's Complaint.

THIRTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "38" of Plaintiff's Complaint.

THIRTY-NINTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph "39" of Plaintiff's Complaint.

COUNT THREE

FORTIETH: Answering paragraph "40" of Plaintiff's Complaint defendant, repeats, reiterates and realleges each and every response to paragraphs "1" through "39", inclusive, of Plaintiff's Complaint as if set forth at length herein.

FORTY-FIRST: Denies the allegations contained in paragraph "41" of Plaintiff's Complaint.

FORTY-SECOND: Denies the allegations contained in paragraph "42" of Plaintiff's Complaint.

COUNT IV

FORTY-THIRD: Denies the allegations contained in paragraph "43" of Plaintiff's Complaint.

FORTY-FOURTH: Denies the allegations contained in paragraph "44" of Plaintiff's Complaint.

COUNT V

FORTY-FIFTH: Answering paragraph "45" of Plaintiff's Complaint defendant, repeats, reiterates and realleges each and every response to paragraphs "1" through "44", inclusive, of Plaintiff's Complaint as if set forth at length herein.

FORTY-SIXTH: Denies the allegations contained in paragraph "46" of Plaintiff's Complaint.

COUNT VI

FORTY-SEVENTH: Answering paragraph "47" of Plaintiff's Complaint defendant, repeats, reiterates and realleges each and every response to paragraphs "1" through "46", inclusive, of Plaintiff's Complaint as if set forth at length herein.

FORTY-EIGHTH: Denies the allegations contained in paragraph "48" of Plaintiff's Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE, THE DEFENDANT PLEADS,
UPON INFORMATION AND BELIEF, AS FOLLOWS:**

FORTY-NINTH: This action is barred, in whole or in part, by the culpable and/or negligent conduct of the plaintiffs, VICTOR HOTH0 and AYAKO MITSUI.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE, THE DEFENDANT PLEADS,
UPON INFORMATION AND BELIEF, AS FOLLOWS:**

FIFTIETH: This Complaint fails to state a cause of action upon which relief may be granted.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE, THE DEFENDANT PLEADS,
UPON INFORMATION AND BELIEF, AS FOLLOWS:**

FIFTY-FIRST: This action is barred by §2805-d of the Public Health Law.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, THE DEFENDANT PLEADS,
UPON INFORMATION AND BELIEF, AS FOLLOWS:**

FIFTY-SECOND: Plaintiff's claims are barred by the applicable statutes of limitation, including but not limited to CPLR §214-a.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, THE DEFENDANT PLEADS,
UPON INFORMATION AND BELIEF, AS FOLLOWS:**

FIFTY-THIRD: The answering defendant is entitled to a limitation of liability under Article 16 of the Civil Practice Law and Rules.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, THE DEFENDANT PLEADS,
UPON INFORMATION AND BELIEF, AS FOLLOWS:**

FIFTY-FOURTH: The amount of alleged damages claimed by plaintiff should be reduced pursuant to CPLR § 4545 to the extent of any collateral source benefits, remuneration or compensation received.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, THE DEFENDANT PLEADS,
UPON INFORMATION AND BELIEF, AS FOLLOWS:**

FIFTY-FIFTH: This Court lacks subject matter jurisdiction over ST. VINCENT'S HOSPITAL, MANHATTAN.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE, THE DEFENDANT PLEADS,
UPON INFORMATION AND BELIEF, AS FOLLOWS:**

FIFTY-SIXTH: The injuries and damages claimed by plaintiff, if any, resulted from an intervening or superseding causes and/or causes, and any act or omission on the part of ST. VINCENT'S HOSPITAL, MANHATTAN was not the proximate and/or competent producing cause of such alleged injuries and damages.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE, THE DEFENDANT PLEADS,
UPON INFORMATION AND BELIEF, AS FOLLOWS:**

FIFTY-SEVENTH: Upon information and belief, each item of economic loss alleged in the complaint was, or with reasonable certainty, will be replaced or indemnified in whole or in part by collateral sources.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE, THE DEFENDANT PLEADS,
UPON INFORMATION AND BELIEF, AS FOLLOWS:**

FIFTY-EIGHTH: No act or omission of ST. VINCENT'S HOSPITAL, MANHATTAN was reckless or careless, or done with actual malice, bad motive and/or with a reckless indifference to the interests of others.


WHEREFORE, the defendant, ST. VINCENT'S HOSPITAL, MANHATTAN, demands judgment dismissing plaintiff's Complaint, together with fees, costs and disbursements.

Dated: New York, New York
April 21, 2005

Yours, etc.

COSTELLO, SHEA & GAFFNEY LLP

By:


DAVID N. ZANE, ESQ. (DNZ 4182)
Attorneys for Defendant
ST. VINCENT'S HOSPITAL, MANHATTAN
44 Wall Street, 11th Floor
New York, New York 10005
(212) 483-9600

TO:

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LAYSER & FREIWALD, P.C.
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(212) 875-8000

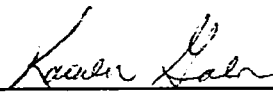
AARONSON RAPPAPORT FEINSTEIN
& DEUTSCH, LLP
Attorneys for Defendants
EDWARD F. ROSSI, M.D. and
PEDIATRICS EAST OF NEW YORK, P.C.
Office and P.O. Address
757 Third Avenue
New York, New York 10017
(212) 593-6700

VERIFICATION


STATE OF NEW YORK)
) SS,:
COUNTY OF NEW YORK)

KATHLEEN GALVIN, being duly sworn, deposes and says:

I am the Executive Director of Saint Vincents Manhattan, a division of Saint Vincents Catholic Medical Centers of New York, defendant in the within action; I have read the foregoing Answer and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a corporation.


KATHLEEN GALVIN
Executive Director

Sworn to before me this
26 day of April, 2005.


NOTARY PUBLIC
JOAN M. DEMPSEY
Notary Public, State of New York
No. 31-1606040
Qualified in New York County
Commission Expires June 30, 2007

NOTICE OF ENTRY

Index No. 05 CV 2609

Year 20

Sir:-Please take notice that the within is a *(certified)*
true copy of a
duly entered in the office of the clerk of the within
named court on 20

Dated

Yours, etc.,

COSTELLO, SHEA & GAFFNEY LLP

Attorneys for

Office and Post Office Address

44 WALL STREET

NEW YORK, N.Y. 10005

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:-Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

One of the judges of the within named Court, at

on 20

at M.

Dated,

Yours, etc.,

COSTELLO, SHEA & GAFFNEY LLP

Attorneys for

Office and Post Office Address

44 WALL STREET

NEW YORK, N.Y. 10005

To

Attorney(s) for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VICTOR HOTH0 and AYAKO MITSUI,
Individually and as parents and natural guardians
of infant, ALYN HOTH0,

Plaintiffs,

- against -

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OF NEW YORK, P.C. and ST. VINCENT'S
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Defendants.

ANSWER AND AFFIRMATIVE DEFENSES

COSTELLO, SHEA & GAFFNEY LLP

Attorneys for

Defendant, ST. VINCENT'S CATHOLIC MEDICAL CENTERS OF N.
ST. VINCENT'S HOSPITAL, MANHATTAN

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